

EU Leaders' Agenda: Who's afraid of reforms?

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Andrew Duff So 25 Feb 2018

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Last Friday's 'informal' meeting of the European Council was a key moment in what its President, Donald Tusk, proudly calls his Leaders' Agenda. Tusk wanted the event to prove that the heads of government are in charge of the EU constitutive process, and to prevent either the European Parliament or the Commission from seizing the initiative. As such it misfired.

As I explained recently [in a paper for the European Policy Centre](#), there were several things that could and should have been decided at this meeting. None were.

Transnational lists

The decision of the European Parliament plenary on 7 February to scupper the proposal to elect some MEPs from transnational lists effectively deprived President Macron of his prized objective in European politics. But Tusk himself was happy to undermine the transnational scheme [in his briefing paper](#) for the heads of government.

Tusk claimed that the principle of degressive proportionality would have to be applied even to the pan-European constituency by way of a compensatory mechanism for those states which did not succeed in having one of their nationals elected on the transnational slate. Such compensation would hollow out the purpose of transnational lists and reduce the impact of the reform on the conduct and outcome of the election. Tusk also claimed that the introduction of transnational lists would require an amendment to Article 14(2) TEU, and not just a revision of the 1976 Act which introduced direct elections. In the event, the European Council agreed merely that "leaders will come back to this issue in the future".

Seat apportionment

The European Council was not even able to agree to accept the formal proposal of the European Parliament for a modest re-apportionment of national seats for next year's elections (P8_TA-PROV(2018)0029). The MEPs propose to use 27 of the 73 vacated British seats to render the composition of the next Parliament degressively proportional, as the Treaty ordains. Dutch Prime Minister Marc Rutte, who (in line with his national parliament) has succeeded David Cameron as leader of the EU's eurosceptic pack, wants all 73 ex-British seats to remain empty. The fact that Parliament's proposal would fix the Netherlands with another three MEPs has no impact on Rutte, who has seldom concealed his disregard for the European Parliament.

Tusk made no effort to respect the European Council's previous decision to agree on a mathematical formula for the technical adjustment of parliamentary seats "in an objective, fair, durable and transparent way". Here the European Council followed the lame example

of the European Parliament itself, which preferred political fudge to mathematical rigour. The European Council will have to return to the matter of Parliament's composition in June when a decision in advance of next year's elections will have to be taken.

Size of the Commission

The European Council also failed to take up the invitation of Jean-Claude Juncker to grapple with the question of reducing the size of the next Commission. Weary of trying to run a bloated college of 28 Commissioners, President Juncker recommends returning to the formula of the Treaty of Lisbon (Article 16(5) TEU) which prescribes a college of two-thirds the number of states. Donald Tusk, however, is hostile to the idea of reducing the state-based character of the Commission, and the European Council as a whole evinced its opposition to any reform that might reinforce the role of the Commission as the European executive authority.

So Juncker's successor in 2019 will be lumbered with the same costly, over-sized college. And the Commission as an institution will risk becoming just yet another Brussels-based ambassadorial committee playing second fiddle to the heads of government.

Merging the executive presidencies

The informal European Council was no more favourable to Juncker's other proposal for 2019, namely that there should be fusion between the two presidencies of the Commission and European Council (Articles 15(6) and 17(6) TEU). It is an important suggestion with far-reaching consequences, and deserves serious consideration. The European Council might at least have established a group of experts to report back on the proposal. It did not.

The idea that a merged two-hatted presidency would be simpler and clearer than at present, and lead to stronger EU governance, does not seem to trouble Tusk. At his most patronising, Tusk told the press at the close of the summit: "Jean-Claude also presented the idea of a merger of our two posts, but there was no appetite to take this forward. Above all, because it would substantially reduce the role of Member States in the EU".

Spitzenkandidaten

The summit debate on repeating the Spitzenkandidat experiment went much as expected. The European Council does not accept Parliament's contention that there should be automaticity between the selection of party champions to fight the election campaign, on the one hand, and the nomination by the European Council of the next Commission president, on the other. In this respect at least, Donald Tusk is correct that the Treaty logic establishes a dual legitimacy for the Commission president based on nomination by the European Council (by QMV) and election by the Parliament (by absolute majority). Should MEPs reject the nomination, the heads of government have one month in which to come up with another choice (Article 17(7) TEU).

This time around, helped by Macron who does not yet have a European political party, the heads of government will be more wary of being ambushed by the Parliament than they were in 2014. There is a delicious irony in that the obvious Spitzenkandidat of the

European People's Party is Michel Barnier, and it was Barnier who was primarily responsible for ensuring the success of the Spitzenkandidat trial in 2014 when he challenged Juncker for the top job. It is at least clear, however, that the EPP will again promote a Spitzenkandidat to lead its election campaign, as it is bound to do by its statutes. The Socialists, Liberals and Greens will all then have to follow suit.

The European Parliament has declared that it will only elect somebody as Commission president who has been a Spitzenkandidat. But, in another twist to the story, the EPP group's decisive rejection of transnational lists in the plenary vote seriously undermines the validity and credibility of the Spitzenkandidat exercise to which the EPP claims such attachment. Without transnational lists, the European dimension of the 2019 election campaign will be largely synthetic; national political parties will remain in charge of the European elections, and the 27 different national campaigns will have very little in common with each other. The visibility of the Spitzenkandidaten to the far away electorate will be dim.

Moreover, there is no guarantee that the newly elected Parliament in July 2019 will stick to the line of the outgoing assembly. Nor is there any informal understanding among the party groups that Jean-Claude Juncker's successor should come as he did, and José Manuel Barroso before him, from the EPP. Rather the contrary. In reality, much of what happens next depends on the conversations that will surely soon take place between Emmanuel Macron and Guy Verhofstadt, the ALDE leader.

Long grass

President Tusk's 23 February incursion into constitutional matters, then, will be noted for his ability to club difficult issues into the long grass. This tactic pays dividends when those issues are of concern only to nationalist and populist leaders, such as Hungary's Viktor Orban and Poland's Mateusz Mariawiecki – both of whom, having only passing acquaintance with the EU treaties, wanted the European Council to discuss limiting the use of qualified majority voting in the Council and resurrecting Cameron's 'red card' proposals for national parliaments.

But Tusk's procrastination is less useful when it means the heads of government put off important decisions about enhancing the democratic legitimacy and executive efficacy of the institutions that collectively govern the Union. That the Leaders' Agenda led nowhere very much on 23 February suggests that serious reflection about the future of Europe is beyond the capability of this European Council. The case for a post-Brexit reflection group of wise men and women grows stronger: Verhofstadt's pre-Laeken group in 2001 is an interesting precedent.

It seems, in any case, that we will have to wait for the next treaty-change Convention before we can tackle significant political and institutional reform of the Union. To prepare for that Convention, which will surely have to take place before the elections of 2024, is now the order of the day. The Spinelli Group itself plans to make a contribution to that preparation in advance of next year's European elections.

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